U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: DEC 23 2005

EAC 03 070 52719

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Mari Johnson

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as an alien of exceptional ability and a member of the professions holding an advanced degree. The petitioner earned a law degree in the Republic of Georgia, and is the owner of Caucasian-American Consulting Group, Inc. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

Section 203(b) of the Act states in pertinent part that:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --
>
> > (A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer.
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The director did not dispute that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service [now Citizenship and Immigration Services] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dept. of Transportation, 22 I&N Dec. 215 (Comm. 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on prospective national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

The petitioner describes his work:

> I graduated the university in 2001 majoring in International Law. . . . I was awarded the Diploma with Honors. . . .
>
> I attended seminars held by Georgian Young Lawyers' Association, where I was one of the most active member[s]. . . . I passed the serious training at Legal Clinics, at district courts of Tbilisi, at the Parliament of Georgia and I took courses of trial advocacy skill organized by [the] America[n] Bar Association.
>
> On my fifth year of study I was employed by major Georgian law firm "Business Legal Bureau." Soon after that I had the highest salary among the employees due to my exceptional skills in law and languages. In the firm I was mostly working with foreign clients. . . . After establishing some significant contacts my firm decided to expand the business and send me to the United States. Months before leaving Georgia I was awarded the Soros Foundation Award for exceptional ability and outstanding performance in the field of law.
>
> Soon after arriving in the U.S.A. I served as an intern in major American law firm "Baker Botts L.L.P.," where I gained very important contacts in the law society of New York.
>
> Finally, together with my law firm I established in New York my own company – "Caucasian-American Consulting Group Inc." My company offers a unique service to

> American firms: as you well know investments need a complex investigation of the region and very careful choice of a strategic partner in the region, where [the] firm is going to invest and such researches cost large amounts of money to the investing company. My firm offers such services to American companies who are willing to invest in [the] Caucasian region (Georgia, Armenia, Azerbaijan) at much lower prices than they are paying now. . . .
>
> American investments in [the] Caucasian Region are growing rapidly and because of that fact, that no one else is offering such [a] service in the United States, my business will prosper soon. . . . I think my business activities will be mutually beneficial for my company and the United States.

We note that 8 C.F.R. § 204.5(k)(4)(ii) states that, to apply for the exemption, the petitioner must submit Form ETA-750B, Statement of Qualifications of Alien, in duplicate. The record does not contain this required document, and therefore the petitioner has not properly applied for the national interest waiver. The director, however, did not note this omission in the denial notice, and never issued a request for evidence to allow the petitioner to remedy the omission. We will, therefore, review the matter on the merits.

The "Soros Foundation Award" mentioned above appears to be a law school scholarship, according to a letter from Tamar Khulordava of the Open Society Georgia Foundation, who states that the beneficiary "received the award of fund [sic] of George Soros for studding [sic] law at Central European University."

The petitioner submits various documents establishing his professional credentials and his academic success. The petitioner also submits letters from various former instructors, employers, and others who have had contact with him. These letters are very general in character, praising the petitioner's "hard work," "excellent judgment," "sense of responsibility" and so on. While favorable, these letters appear to be fairly routine letters of recommendation rather than evidence that the petitioner has made particularly valuable contributions to the legal profession.

Regarding his work in the United States, Stuart T. Solsky of Baker Botts states that the petitioner "was an intern at our office for approximately two weeks in September 2002. During that time, [the petitioner] showed great interest in the legal field and was eager to learn about the practice of law in the United States. [The petitioner] was dedicated to tasks I assigned him, and was prompt and professional in every respect." The record documents the petitioner's attendance at various professional conferences.

A receipt from the New York Department of State indicates that the petitioner filed to incorporate Caucasian-American Consulting Group on November 19, 2002, six weeks before he filed the immigrant visa petition on December 31, 2002. The record contains no evidence to show how much business, if any, Caucasian-American Consulting Group had conducted during those six weeks.

On September 21, 2004, the director issued a generic request for evidence (RFE) that discussed types of evidence that are desirable when one seeks a national interest waiver. The director made no specific mention of the petitioner's work or his initial evidence. The director refers to the petitioner as a "biochemist," and to the petitioner's field of endeavor as "Biochemistry." The director also instructed the petitioner to submit

evidence of extraordinary ability, which pertains to a different immigrant visa classification that the petitioner has not sought.

Because the RFE contained several clearly inapplicable statements, and no direct reference to the petitioner's actual work, the petitioner assumed that his evidence had been misfiled. The petitioner's response to the RFE consists primarily of copies of documents from the initial submission. The petitioner also states, in a new letter, that he is "attending one of the prominent law schools in the United States and at the same time managing my Corporation which I have established."

The director denied the petition on April 5, 2005. The denial notice, unlike the earlier RFE, contains specific references to materials in the record. The director stated that the petitioner had failed to establish that his work has had, or is likely to have, a particularly significant impact within the legal profession.

On appeal, the petitioner asserts that he did not submit new materials in response to the RFE because the inaccuracies in that notice let the petitioner to believe that the director "lost my file." We acknowledge the deficiencies in the RFE, and will give full consideration to the materials submitted on appeal that the petitioner claims that he would have submitted in response to a proper RFE.

The petitioner repeats the assertion that he is "introducing a new service on the U.S. market" and that his "company offers a unique service to American firms" by facilitating American investment in the Caucasus region of Eastern Europe. The petitioner argues that, because he founded the company and acts as its head, the company is obviously dependent on his continued involvement.

The record shows that the petitioner was a successful law student in Europe, and still was a law student at the time he filed the appeal in 2005 at the age of 25. The record does not show, however, that the petitioner had extensive experience or expertise in international trade consulting at the time he filed the petition. Rather, he had formed his consulting business only six weeks earlier. The petitioner states: "I think it is unfair to compare me with 50 or 45 year old lawyers and their achievements. If you show me another lawyer who by the age of 25 has independently achieved recognition in his home country and region, has demonstrated exceptional academic abilities, owns [a] corporation in the U.S. which is introducing new services to the American market then I would concede that maybe I am not that exceptional."

We note that the plain wording of the statute and regulations (quoted elsewhere in this decision) demonstrates that exceptional ability is not, by itself, sufficient grounds for a national interest waiver. The petitioner has certainly not been idle in his pursuits, and limiting consideration to 25-year-old lawyers would tend to increase his visibility in his field (in part because, in the United States, unlike in Georgia, law schools generally require a four-year baccalaureate degree, rather than accepting students straight out of high school). At the same time, the record is virtually silent as to what the petitioner has done as a lawyer in the United States. The record documents only a two-week internship. The petitioner states that he is still a law student, and there is no evidence that the petitioner has been admitted to the bar in any U.S. jurisdiction.

Some of the documents submitted on appeal concern his treatises on constitutional law in Georgia, a nation which, unlike the United States, became a constitutional democracy within the petitioner's own lifetime and

which is therefore undergoing a process of transition, formation and consolidation. Because the United States is not undergoing a comparable process, having celebrated the bicentennial of its Constitution before communism fell in Georgia, it is not readily apparent that the petitioner's particular skills in this area are needed within the United States. One could argue that Georgia, rather than the United States, requires the petitioner's services in this particular area.

There remains the petitioner's track record in the area in which he proposes to benefit the national interest, specifically in facilitating U.S. investment in Eastern Europe. With regard to international trade, the petitioner's track record is minimal. He submits copies of Caucasian-American Consulting Group's tax returns from 2003 and 2004. We note that the petitioner must establish eligibility as of the petition's December 2002 filing date, pursuant to *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971). We will, nevertheless, consider these subsequent tax returns, because they amount to the only existing evidence relative to the petitioner's work as a trade consultant.

In 2003, gross receipts of $2,167 were not sufficient to cover $2,400 in rent payments. After all deductions, the company reported a net loss of $680. The corporation's total income for 2004 was $3,040, most of which was again taken up in rent payments; the corporation ended that year with a net loss of $134. The company paid no salaries, wages, or officer's compensation in either year. These figures do not demonstrate significant demand for the petitioner's services as a consultant. They do not even demonstrate that the petitioner could realistically make a living from his work for the company. The tax returns are the only evidence that the corporation is conducting any business at all.

The petitioner has provided no independent support for his claim that the United States is in need of investment consulting services specializing in the Caucasus region, and his own company providing those services is unable to cover its own expenses. We cannot conclude, from the minimal evidence offered, that the petitioner's contributions are so significant, at a national level, that they warrant the approval of a special immigration benefit.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

This denial is without prejudice to the filing of a new petition by a United States employer accompanied by a labor certification issued by the Department of Labor, appropriate supporting evidence and fee.

ORDER: The appeal is dismissed.